

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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DAVID POWELL,

Plaintiff,

-against-

ORDER

11-CV-2561 (ADS) (ETB)

DANIEL MURPHY, BADGE NO. 5040,
individually and in his official capacity;
ROBERT SUPPA, BADGE NO. 1359,
Individually and a Detective of the Suffolk
County, N.Y. Police Department; OFFICER
TRUESDELL, BADGE No. 1349, individually
and in his official capacity, EILEEN
O'CONNELL, individually and COUNTY OF
SUFFOLK, N.Y.,

Defendants.

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APPEARANCES:

Arthur V. Grasek, Jr., Esq.

Attorney for the plaintiff
99 Meredith Lane
Oakdale, NY 11769

Frank J. Blangiardo, Esq.

Attorney for the plaintiff
PO Box 1169
Cutchogue, NY 11935

Christine Malafi, Suffolk County Attorney

Attorneys for the defendants

H. Lee Dennison Building
100 Veterans Memorial Highway
Hauppauge, NY 11788

By: Richard T. Dunne, Assistant County Attorney

SPATT, District Judge.

On May 26, 2011, plaintiff David Powell ("Powell" or "the Plaintiff") commenced this
action against Suffolk County, members of the Suffolk County Police Department Daniel

Murphy, Robert Suppa, and Officer Truesdell (collectively “the County Defendants”), and Eileen O’Connell (“O’Connell”) asserting claims for false arrest and malicious prosecution against the County Defendants pursuant to 42 U.S.C. §§ 1983, 1988 and the Fourth Amendment, and against O’Connell under New York common-law. Presently before the Court are the following two motions: (1) a motion by O’Connell to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) and (2) the Plaintiff’s motion to amend the complaint with respect to claims asserted only against O’Connell. As set forth below, the Court denies both motions without prejudice.

On July 27, 2011, defendant O’Connell, acting *pro se*, moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. However, the record in this case reflects that O’Connell is not *pro se*, but rather represented by Assistant County Attorney Richard T. Dunne of the Suffolk County Law Department. Not only is Mr. Dunne listed as counsel of record on the docket sheet, but on June 16, 2011, Mr. Dunne filed an Answer on behalf of the County Defendants and O’Connell. When a party is represented by a lawyer in a case, submissions generally must come from that counsel. Accordingly, the Court denies O’Connell’s motion to dismiss the complaint without prejudice to re-filing by counsel or re-filing by O’Connell upon effective termination of the attorney representation.

On August 25, 2011, the Plaintiff filed a motion to amend the complaint to add a cause of action for slander against O’Connell and additional factual allegations with regard to the claims asserted against O’Connell in the original complaint. Local Civil Rule 7.1 for the Eastern District of New York provides that:

- (a) Except as otherwise permitted by the Court, all motions shall include the following motion papers:
 - (1) A notice of motion, or an order to show cause signed by the Court, which shall specify the applicable rules or statutes pursuant to which the motion is brought, and shall specify the relief sought by the motion;

- (2) A memorandum of law, setting forth the cases and other authorities relied upon in support of the motion, and divided, under appropriate headings, into as many parts as there are issues to be determined; and
- (3) Supporting affidavits and exhibits thereto containing any factual information and portions of the record necessary for the decision of the motion.

The only document submitted in support of the Plaintiff's motion to amend was an affirmation by Plaintiff's counsel, Arthur V. Graseck, Jr. Accordingly, the Court denies the Plaintiff's motion to amend the complaint without prejudice to re-filing the motion in accordance with Local Rule 7.1.

SO ORDERED.

Dated: Central Islip, New York
October 17, 2011

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge